

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**1999 MTWCC 80A**

**WCC No. 9903-8174**

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**STANDARD FIRE INSURANCE COMPANY/ SISTERS OF CHARITY OF LEAVENWORTH HEALTH SERVICES CORPORATION,**

**Appellants,**

**vs.**

**VICTORIA AUSTIN,**

**Respondent.**

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**ORDER AWARDING COSTS**

1 On December 23, 1999, counsel for respondent/claimant, filed respondent's statement of costs incurred. The appellant's objections were filed on January 14, 2000. On January 18, 2000, claimant submitted a statement of time incurred by counsel for appellee and a clarification of the cost request. Appellant, filed additional responses to the documents regarding the cost issue, but did not file any objection to the requested attorney fees. Mr. Norman H. Grosfield, counsel for Ms. Austin, has advised the Court by telephone that the insurer has paid the attorney fees, thus that matter need not be addressed.

2 On February 15, 2000, the Court held a conference call with Mr. Grosfield and Mr. Peter J. Stokstad to discuss whether the insurer must pay \$650 in costs to the claimant for the preparation and trial testimony of Dr. Nelson. Dr. Nelson had been paid a \$650 fee by the insurer for a deposition taken by the insurer. Deposition costs are governed by Rule 24.5.342, which provides in pertinent part:

(4) The following are examples of costs that are generally found to be reasonable:

....

(c) expert witness fees, including reasonable preparation time, for testimony either at deposition or at trial, but not at both;

The purpose of the rule is to prevent a party from taking a witness' testimony twice and recovering costs for both. In this case, the deposition of Dr. Nelson was taken by and billed to the insurer. Claimant was not required to forsake Dr. Nelson's testimony at trial and took his testimony once, hence she is entitled to her costs in the amount of \$650.

5 Appellant also objects to a \$25 charge for copies of records, but this charge has been withdrawn.

6 Claimant requested she be allowed to add costs for travel and lodging for the trial in the amount of \$288.88. No objection was made to the submission of the request to add this cost, therefore it is allowed.

7 Finally, appellant argues that costs for travel to Billings by claimant's attorney for purposes other than the taking of depositions are not allowed by the Workers' Compensation Court's rules. Specifically, the appellant objects to travel costs for claimant's attorney's travel to Billings for an *in camera* review of hospital records (November 1997); trial preparation of his client on two occasions (February 1998 and May 1998); deposition preparation with Dr. Nelson (January 1998); and to attend the hearing before the Department (May 13, 1998). The costs involved are as follows:

Travel costs 11/06/97 - 11/08/97	\$238.88
Travel costs 01/08/98 - 01/09/98	188.88
Travel costs 02/11/98	138.88
Travel costs 05/01/98 - 05/02/98	198.11
Travel costs 05/11/98 - 05/14/98	<u>288.88</u>
TOTAL	\$1,053.63

8 The Court rule regarding travel costs provides:

24.5.342 TAXATION OF COSTS

....

(3) The court will allow reasonable costs. The reasonableness of a given item of cost claimed is judged in light of the facts and circumstances of the case, and the issues upon which the claimant prevailed.

(4) The following are examples of costs that are generally found to be reasonable:

....

(d) travel and lodging expenses of counsel for attending depositions;

....

(6) Items of cost not specifically listed in this rule may be awarded by the court, in accordance with the principles in (3).

In light of express provisions for attorney travel to depositions, any other travel of an attorney must be truly unusual and extraordinary. The costs enumerated above are not. The costs for the travel as itemized above are disallowed.

9 IT IS HEREBY ORDERED that the appellant, Standard Fire Insurance Company, pay to the claimant's attorney, Mr. Norman H. Grosfield, his costs in the amount of \$2,518.95.

DATED in Helena, Montana, this 7<sup>th</sup> day of March, 2000.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Peter J. Stokstad

Mr. Norman H. Grosfield

Submitted: February 14, 2000